



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCO/169050
170456

PRELIMINARY RECITALS

Pursuant to a petition filed September 30, 2015, under Wis. Admin. Code § HA 3.03, to review a decision by the Milwaukee Early Care Administration - MECA in regard to Child Care, a hearing was held on January 13, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly determined that the petitioner was overpaid \$946.25 in child care benefits for the period of July 1, 2014 through December 31, 2014.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

|

Respondent:

Department of Children and Families
201 East Washington Avenue, Room G200
Madison, Wisconsin 53703

By: [REDACTED]
Milwaukee Early Care Administration - MECA
Department of Children And Families
1220 W. Vliet St. 2nd Floor, 200 East
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

2. The petitioner received child care assistance between July 1, 2014 and December 31, 2014. The petitioner reported that she and her baby were the only people in the household, and the amount of childcare assistance was based on the petitioner's income.
3. The agency received an alert that the father of the petitioner's child was living in the petitioner's home.
4. The father of the petitioner's child completed a renewal for his healthcare benefits on June 30, 2014. He reported that he was living at the petitioner's address on the application.
5. On July 1, 2015 the agency sent the father of the petitioner's child a notice to the petitioner's address stating that he would receive health care and FoodShare. That notice was never returned.
6. On September 8, 2014 the agency sent the father of the petitioner's child another notice to the petitioner's address. This notice stated that his monthly FoodShare benefits were increasing. The notice was never returned.
7. In October 2014 the petitioner was in a car accident. The father of her child posted pictures on facebook of himself and the petitioner together in an ambulance. He captioned the picture saying one minute you can be smiling and having a good time with the person you love, and the next minute running to the scene of a car accident thinking the worst.
8. On November 5, 2014 the father of the petitioner's child completed a renewal for his FoodShare benefits. He reported that he was living at the petitioner's address.
9. On December 8, 2014 the agency sent the father of the petitioner's child a notice to the petitioner's address. This notice was returned to the agency with a forwarding address.
10. On October 19, 2015 the agency sent the petitioner a notice of overpayment stating that she was overpaid \$946.25 in child care benefits for the period of July 1, 2014 through December 31, 2014 due to client error and an intentional program violation.
11. The father of the petitioner's child was in the petitioner's home from July 1, 2014 through November 30, 2014. He not in the petitioner's home in December 2014.
12. The household's gross monthly income between July 1, 2014 and November 30, 2014 was as follows:
 - a. July 2014 - \$2,113.33
 - b. August 2014 - \$2,398.33
 - c. September 2014 - \$2,056.33
 - d. October 2014 – \$2,512.66
 - e. November 2014 - \$2,430.66
13. On September 30, 2015 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.

DISCUSSION

All child care funding distribution falls under the aegis of the Wisconsin Works (W-2) program, regardless of whether or not the applicant is actually a participant in W-2 activities. Wis. Stat § 49.155(1m). Prior to January 1, 2004, any parent desiring to contest child care assistance overpayments was required to request a fact-finding review from the issuing W-2 agency. Effective November 24, 2003, the Department of Workforce Development changed the process to provide recipients of such assistance a fair hearing from the Division of Hearings & Appeals. *Child Day Care Manual*, §2.5.0. See also, Wis Stat §49.195(3), § 49.152(2), & § 227.42, *et. seq.* The applicable overpayment rule requires

recovery of the overpayment, regardless of fault. Wis. Admin. Code §DCF 201.04(5)(a). See in accord, *Child Day Care Manual*, §2.3.1.

In order to qualify for child care assistance a household must be financially eligible and one, or both parents in the case of a two parent household, must be in an approved activity. *Child Day Care Manual*, §1.5.1., §1.4.8.2.

In this case the issue is whether the father of the petitioner's child was in her home during the overpayment period. I conclude that the father was in the petitioner's home between July 1, 2014 and November 30, 2014. I do not believe that he was living there in December 2014.

There is significant evidence that the father of the petitioner's child was living in her home between July 1, 2014 and November 30, 2014. In April of 2014 he posted on facebook that he was engaged to the petitioner. On June 30, 2014 he completed a renewal for his public assistance benefits. On the renewal form he reported that he was living at the petitioner's address. The agency sent the father of the petitioner's child multiple notices at the petitioner's address. These notices were not returned, and presumably he received the notices. He continued to complete the necessary renewals for his own public assistance benefits using the petitioner's address. In addition his facebook posts show a picture of him with the petitioner in an ambulance in October 2014 after the petitioner had a severe car accident. He captions the photo with a statement that one minute a person can be smiling and having a good time with the person you love, and the next minute running to the scene of a car accident thinking the worst.

At the hearing the petitioner testified that father of her child was not living with her during the overpayment period. She presented a copy of a lease extension showing that he was not on that lease. Although this was after the overpayment period, the petitioner testified that it was a reflection of her lease during the overpayment period. The agency highlighted that the petitioner was living in low income housing. The cost of her rent was based on her income. Had she reported the father of her child in the home, his income would have been included in the monthly rental calculation, and her rent would have been higher. The petitioner further testified that during the overpayment period she allowed the father of her child to use her address. She was unable to provide a consistent alternative location where he was living. She said that he was back and forth from one place to another. I note that she never pursued a child support order. She testified that she never wanted anything from him. However, this testimony is not convincing or credible. The petitioner had a financial incentive to not report that the father of her child in her home. She is unable to provide an explanation for how multiple notices were sent to her home, and not returned except to say that she let him use her address. This is simply not a credible explanation for the period of July 1, 2014 through November 30, 2014.

Although I agree with the agency for the period of July 1, 2014 through November 30, 2014, I disagree that the petitioner was living with the father of her child in December 2014. The agency received returned mail that month. Based upon the petitioner's testimony and the returned mail, I cannot sustain an overpayment for December 2014. I reviewed the agency's overpayment calculations from July 1, 2014 through November 30, 2014. Those calculations are correct.

CONCLUSIONS OF LAW

The agency correctly determined that the petitioner was overpaid child care benefits for the period of July 1, 2014 through November 30, 2014. The agency incorrectly included December 2014 in the overpayment period.

THEREFORE, it is

ORDERED

That this case is remanded to the agency with instructions to remove December 2014 from the overpayment period. The agency shall issue new notices reflecting this new overpayment period with a new overpayment amount. In all other respects this appeal is dismissed. The agency has 10 days to comply with this order.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

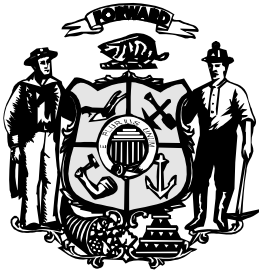
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 20th day of January, 2016

\s\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



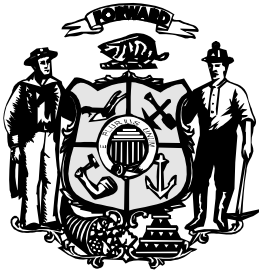
State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
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The preceding decision was sent to the following parties on January 20, 2016.

Milwaukee Early Care Administration - MECA
Public Assistance Collection Unit
Child Care Fraud
[REDACTED]



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